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PUSHED OUT: A CALL FOR INCLUSIONARY HOUSING PROGRAMS IN LOCAL CONDOMINIUM CONVERSION LEGISLATION

I. INTRODUCTION

Imagine you are a recent retiree in Big City, California, excited about the prospect of life in your golden years. While looking forward to leisure and some limited travel, you intend to remain in the same apartment you have been renting for the past ten years. After all, you cannot afford to move on your fixed income. Then comes the news. You receive a letter in the mail advising you that your apartment complex will undergo a “condominium conversion”¹ and your tenancy will be terminated in 120 days.

You are faced with two impractical choices: buy or move. Because of your limited income, you certainly cannot afford to buy your unit. Likewise, you cannot afford to rent another apartment in the immediate area because market rates have soared and supply has diminished in recent years. To make matters worse, you learn that although Big City has several procedural regulations governing the conversion of apartments into condominiums, there are virtually none that protect you.

Although this scenario might seem like a gross exaggeration, it is a stark reality for an increasing number of people, as the number of condominium conversions nationwide has surged in recent years.² This is especially true in areas with an inadequate supply of affordable

1. “Condominium conversion is the process of changing a multiunit rental property from single ownership to [joint] condominium ownership.” JOHN A. CASAZZA, *THE URBAN LAND INST., CONDOMINIUM CONVERSIONS* 3 (1982). Although a condominium conversion can involve non-residential structures, it is typically associated with the conversion of rental apartment buildings to condominiums. *Id.* This Comment’s scope is limited to the more common residential conversion.

2. Charisse Jones, *Soaring Numbers of Rentals Go Condo*, USA TODAY, July 7, 2005, at A1. “At least 70,800 apartment units were sold to condominium developers nationwide in 2004, up from 7,800 in 2002 As of June 1, at least 43,900 units ha[d] been sold to developers [in 2005]” *Id.*

housing, such as California.³ But this unprecedented boom in conversions has ushered in a host of problems for local governments.

Individual jurisdictions are left to weigh the competing interests associated with condominium conversions and decide how, or whether, to regulate the process. Specifically, "local governments are faced with the difficulty of creating a harmonious balance between affordable home ownership and affordable rental opportunities."⁴ In addition, as the above hypothetical suggests, local governments must take into account the displacement of low- and moderate-income tenants.⁵

These competing factors have led to a renewed debate over inclusionary housing programs and their applicability to condominium conversions.⁶ In general, inclusionary housing programs require developers to make a certain number of new units available to low- and moderate-income households.⁷ However, "in California there are no laws that expressly authorize, require or otherwise place limits on the adoption of inclusionary housing"⁸ Thus, the choice of whether to implement such programs is left entirely up to local legislators.⁹

The issue of whether to incorporate inclusionary housing policies into local condominium conversion regulations is ripe for discussion, especially because the proliferation of conversions has many localities

3. *Id.*; see also Gordon Ip, *Condo Development in the West Reaches New Heights*, BDMAG.COM, June 2004, http://www.bdmag.com/issues/jun_2004/f_urban.htm (recognizing Southern California "as one of the hottest condominium [conversion] markets in the nation").

4. SANDAG, ISSUE PAPER: CONDOMINIUM CONVERSIONS IN THE SAN DIEGO REGION 1 (2004), available at http://www.sandag.org/uploads/publicationid/publicationid1078_3231.pdf.

5. See *id.* at 4.

6. See, e.g., Barbara Ehrlich Kautz, Comment, *In Defense of Inclusionary Zoning: Successfully Creating Affordable Housing*, 36 U.S.F. L. REV. 971 (2002).

7. *Id.* at 971-72. Although there are noted differences, *inclusionary housing inclusionary zoning*, and *inclusionary housing programs* will be used interchangeably throughout this Comment. In California, "very low income households" earn 50% or less of the area median income. CAL. HEALTH & SAFETY CODE § 50105(a) (Deering 2005). "Lower income households" earn 80% or less of the area median income. CAL. HEALTH & SAFETY CODE § 50079.5(a) (Deering 2005). "Persons and families of low or moderate income" do not earn more than 120% of the area median income. CAL. HEALTH & SAFETY CODE § 50093 (Deering 2005).

8. Nico Calavita, *Origins and Evolution of Inclusionary Housing in California*, NHC AFFORDABLE HOUSING POL'Y REV., Feb. 2004, at 3, 6.

9. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *Inclusionary Housing in California: 30 Years of Innovation*, NHC AFFORDABLE HOUSING POL'Y REV., Feb. 2004, at 9, 9.

reexamining their condominium conversion ordinances.¹⁰ Part II of this Comment discusses the rationale behind California's conversion craze, including a comparison of the advantages and disadvantages of such conversions, and gives an overview of governing state legislation. Part III provides a historical background of inclusionary housing and examines the conflicting views of such programs as they relate to condominium conversions. A call for inclusionary housing programs in all California conversion legislation follows in Part IV. Lastly, this Comment concludes that inclusionary housing programs are a necessary component of any successful condominium conversion policy.

II. THE CALIFORNIA CONDOMINIUM CONVERSION CRAZE

A. *The Affordable Housing Crisis*

It is no secret that California is in the midst of an affordable housing crisis.¹¹ Despite the crisis being identified as critical in the early 1980s,¹² little has been done during the past two decades to alleviate it.¹³ Although the affordable housing problem has long been associated with low-income households, today even middle-income families are struggling to find affordable housing.¹⁴

One factor contributing to the problem is the almost unabated increase in housing prices that the state has experienced since 1982.¹⁵ According to the California Association of Realtors, the median sin-

10. Mike Freeman, *Area Renters Get a Break: Cost Increase in County Less than in State, Region*, SAN DIEGO UNION TRIB., Apr. 27, 2005, at C1 (stating that a "conversion craze has led cities to examine their condo conversion laws").

11. Jon Hammer, *The Conversion Crusade*, SAN DIEGO DAILY TRANSCRIPT, June 29, 2004, available at <http://www.sddt.com/Reports/article.cfm?SourceCode=20040629rp>.

12. See John R. Nolon, *The Role of Local Government in Affordable Housing*, in HOUSING SUPPLY & AFFORDABILITY 175, 175 (Frank Schnidman & Jane A. Silverman eds., 1983). "The inability to produce sufficient affordable housing is one of the most critical issues facing the nation. The scale of the problem is awesome." *Id.* at 175.

13. See Arthur C. Nelson, Fannie Mae Foundation, *Top Ten State and Local Strategies to Increase Affordable Housing Supply*, HOUSING FACTS & FINDINGS, Jan.-Mar. 2003, at 1, 1, available at <http://www.fanniemae.foundation.org/programs/hff/v5i1-topten.shtml>.

14. Laura M. Padilla, *Reflections on Inclusionary Housing and a Renewed Look at Its Viability*, 23 HOFSTRA L. REV. 539, 543-44 (1995); CAL. BUDGET PROJECT, LOCKED OUT 2004: CALIFORNIA'S AFFORDABLE HOUSING CRISIS 1 (2004), available at <http://www.cbpr.org/2004/lockedout2004.pdf>. The affordability crisis is not limited to just the poorest households. See INST. FOR LOCAL SELF GOV'T, THE CALIFORNIA INCLUSIONARY HOUSING READER 65 (2003) [hereinafter IH READER]. It affects a large segment of middle-income families, including public safety employees, teachers, and healthcare workers. *Id.*

15. Calavita, *supra* note 8, at 3 (depicting a dramatic increase in the median home price in California from 1982 to 2002).

gle-family home price reached a record high of \$568,890 in August 2005.¹⁶ This figure was up 20.1% from the year before,¹⁷ and more than 300% higher than it was just eight years ago.¹⁸ In November 2005, the increased housing prices meant that a mere 14% of California families could afford a median-priced home; the national average was 48%.¹⁹

Exacerbating the problem, “[h]ousing production has not kept pace with the State’s housing needs . . . and [the] housing need has worsened, especially for renter households and low-income owner households throughout the State.”²⁰ Of particular concern is the relative decline in the construction of new multi-family units.²¹ Since 1992, multi-family housing has accounted for less than 30% of total new construction annually.²² This is down sharply from 1970, when it made up nearly two-thirds of new construction.²³ Even worse, the supply does not seem to be increasing. Despite production goals, current construction continues to lag behind recommended levels.²⁴

Put simply, the affordable housing crisis is deepening. Steadily increasing prices coupled with a low housing inventory mean that more and more people are being pushed out of the housing market.²⁵ As a result, both state and local officials are being asked to find solutions, but at what expense?

16. Press Release, Cal. Ass’n of Realtors, Median Price of a Home in California at \$568,890 in August, Up 20.1 Percent from Year Ago; Sales Increase 7 Percent (Sept. 26, 2005) [hereinafter Cal. Ass’n of Realtors, Sept. 26, 2005], available at <http://www.car.org/index.php?id=MzU1MTc=>. Although more recent statistics are available, the August 2005 statistic is used because it was the peak median home price in California. For example, the California median home price in February 2006 was \$535,470, \$33,420 less than in August 2005. See Press Release, Cal. Ass’n of Realtors, Median Price of a Home in California at \$535,470 in February, Up 13.7 Percent from Year Ago; Sales Decrease 15.5 Percent (Mar. 23, 2006) [hereinafter Cal. Ass’n of Realtors, Mar. 23, 2006], available at <http://www.car.org/index.php?id=MzYwMDM=#>.

17. Cal. Ass’n of Realtors, Sept. 26, 2005, *supra* note 16.

18. See Press Release, Cal. Ass’n of Realtors, California Median Home Price and Sales Rise Sharply, Outpacing National Gains (Sept. 26, 1997), available at <http://www.car.org/index.php?id=MTA5OQ==> (stating the median home price of a single-family home in California in August 1997 was \$194,390).

19. DIV. OF HOUS. POLICY DEV., CAL. DEP’T OF HOUS. & CMTY. DEV., CALIFORNIA’S DEEPENING HOUSING CRISIS: JAN. 13, 2006, at 2 (2006), available at <http://www.hcd.ca.gov/hpd/hc011306.pdf>.

20. *Id.* at 1.

21. *Id.*

22. CAL. BUDGET PROJECT, *supra* note 14, at 19.

23. *Id.*

24. *Id.*

25. See *id.* at 2, 19.

B. Rationale Behind Condominium Conversions

Condominium conversions are not a new phenomenon.²⁶ Conversions are a well-established “trend that typically moves in waves.”²⁷ “[Conversions were] popular in the late 1970s, and then [they] stopped completely. A mini wave happened again in the late 1980s, and now we’re seeing another wave.”²⁸ Historically, the most dramatic increases in conversions occur just before the real estate market peaks.²⁹ For example, between 1970 and 1979, there were 366,000 conversions nationwide; 135,000 of those occurred in 1979 alone.³⁰ But this begs the question: Why are conversions so attractive?

1. The Factors Fueling Conversion

There are undoubtedly many factors that have contributed to the recent boom in condominium conversions.³¹ Several key factors stand out as driving forces: the lack of affordable housing, an insufficient supply of undeveloped land, and developers’ financial motivation.³² A brief examination of each factor will help explain the rationale behind condominium conversions.

The first factor is the lack of affordable housing. “Proponents of conversions emphasize that condos open the door to home ownership to people otherwise priced out.”³³ This is a viable argument considering condominiums are typically much more affordable than detached, single-family homes.³⁴ For instance, in February 2006, the median

26. Alyson Pitarre, *Conversion Craze Hits the West*, BUILDER & DEVELOPER MAG., Feb. 2005, available at http://www.bdmag.com/issues/feb_2005/d4.htm.

27. *Id.*

28. *Id.*

29. Andrew LePage, “Condo Craze” Sows Seeds of Controversy: Entry-Level Homes Increase but Apartments Decline, SACRAMENTO BEE, Sept. 13, 2004, at D1, available at <http://www.sacbee.com/content/business/story/10727908p-11646378c.html>.

30. CASAZZA, *supra* note 1, at 4.

31. Dixie Hall et al., *Condo Conversions—Converting the San Diego Marketplace*, MULTI-HOUSING MONITOR, Apr. 2004, at 1 (citing low interest rates and recent legal reform affecting construction defect liability as two reasons for the conversion craze).

32. *Id.*; see also Hammer, *supra* note 11; Pitarre, *supra* note 26; Glenn Roberts Jr., *Real Estate Boom Leaves Casualties: Condo Conversions Deplete Rental Stock in Some Cities*, THE STANDARD-TIMES (New Bedford, Mass.), July 2, 2005, at T-22, available at <http://www.southcoasttoday.com/daily/07-05/07-02-05/t22hh906.htm> (identifying a demand for home ownership, historically low interest rates, and novel financing tools as contributors to the boom in apartment-to-condominium conversions).

33. LePage, *supra* note 29.

34. Press Release, Cal. Ass’n of Realtors, C.A.R. Report Says California Condo Market Going Strong (Mar. 31, 2005), available at <http://www.car.org/index.php?id=MzQ4MTA=>

price for a condominium in California was \$102,330 less than that of a single-family detached home.³⁵ Thus, with affordable housing in California becoming increasingly scarce, “[c]onverted condominiums . . . are the only way for many residents to buy their first home.”³⁶

The second component underlying the flood of conversions is the lack of raw land.³⁷ There is so little undeveloped land left to accommodate suburban growth in California that developers are left to look toward cities’ urban centers.³⁸ As one columnist said, “Southern California is undergoing a transformation from horizontal to vertical growth.”³⁹ Thus, conversions are being undertaken, quite literally, out of necessity.

The last major factor fueling condominium conversions is the developers’ incentive for profit.⁴⁰ Simply put, “[t]here is a lot of money to be made in condo conversions.”⁴¹ The developer of a converted condominium project can realize returns from 15 to 30% in a matter of months.⁴² In addition to direct profits, developers often save on time and construction costs when they convert existing apartments instead of building new condominiums.⁴³ This translates into even more profits for developers.⁴⁴ The combination of these incentives enables developers to pay substantial premiums for the apartment properties they acquire, leaving the owners of apartment buildings with little choice but to sell.⁴⁵

2. *Potential Adverse Impacts of Condominium Conversions*

While no one questions that condominium conversions provide a means to *more* affordable housing, condominium conversions are not

(“[T]he median [price] for condos is generally 75 to 80 percent of the median for detached homes . . .”).

35. See Cal. Ass’n of Realtors, Mar. 23, 2006, *supra* note 16.

36. Jones, *supra* note 2.

37. Hammer, *supra* note 11.

38. *Id.*

39. Ip, *supra* note 3.

40. Pitarre, *supra* note 26.

41. *Id.* (quoting Peter Miller, a real estate agent at Paramount Rodeo Realty in Encino, California).

42. *Id.*

43. Dan Levy, *Going Condo*, S.F. CHRON., July 24, 2005, at J1.

44. See *id.*

45. See Joe Gose, *Condo Conversion Craze*, NAT’L REAL EST. INVESTOR, June 1, 2004, available at http://www.nreionline.com/property/multifamily/real_estate_condo_conversion_craze/.

without problems. Two of the most serious consequences of transforming apartment complexes into condominiums are the displacement of low- and moderate-income tenants and, at the same time, the depletion of the number of available rental units in the area.⁴⁶

"[C]onversion usually results in significant tenant displacement because most renters cannot afford to purchase *market rate* condominiums."⁴⁷ Just as with detached homes, condominiums have experienced exponential price appreciation in recent years.⁴⁸ Since 1997, the median price of condominiums in California has risen from \$140,750 to \$433,140, a 325% increase.⁴⁹ On average then, less than 10% of displaced tenants can afford to purchase their converted unit—a glaring indication of the problem's severity.⁵⁰ Without a system in place to make more units available to affected tenants, displacement will continue to occur at an alarming level.

The dramatic appreciation of condominiums has also prompted investors, or "speculators," to become involved.⁵¹ Some purchase converted units with the intent to resell them a short time later, often at a significant profit.⁵² Other investors choose to rent out the converted units for up to double the pre-conversion rent.⁵³ This acts as a "double-edged sword."⁵⁴ Aside from being unable to afford the steep purchase price, displaced tenants are often unable to afford the in-

46. Lori Weisberg, *Condo Conversions Transform Market: Trend Can Be Salvation for New Buyers, but the Bane of Displaced Renters*, SAN DIEGO UNION-TRIB., Apr. 17, 2005, at A1.

47. S.F. PLANNING & URBAN RESEARCH ASS'N, PROMOTING HOMEOWNERSHIP THROUGH CONDOMINIUM CONVERSION 1 (2004) (emphasis added), available at http://www.spur.org/documents/SPUR_Condo_Conv.pdf.

48. Jessica Swesey & Glenn Roberts Jr., *First-Time Buyers Flood Condo Market*, INMAN NEWS, Apr. 28, 2005, available at <http://www.allisoncrow.net/News?ID=45944>. "[A]nnual price appreciation of condos surpassed that of detached homes in all but one of the last five years in California." *Id.*

49. Compare Cal. Ass'n of Realtors, *supra* note 18 (listing the median condominium price as \$140,750), with Cal. Ass'n of Realtors, *supra* note 35 (listing the median condominium price as \$433,140).

50. LePage, *supra* note 29.

51. Gose, *supra* note 45 (estimating that speculators account for 30 to 50% of the condominium market).

52. *Condo Boom Lures Foreign Investment*, CBSNEWS.COM, Aug. 7, 2005, available at <http://www.cbsnews.com/stories/2005/08/07/ap/business/mainD8BR4ORO0.shtml>.

53. *Condo Conversions: A Help or Hindrance to Housing Efforts in California?*, FOCUS ON HOUSING, Sept. 2005, at 1, 5, available at http://www.cacities.org/resource_files/24020.sept2005.pdf.

54. Gose, *supra* note 45.

creased rent of a converted unit.⁵⁵ Without the financial means to purchase their converted unit and with inadequate income to afford the rent hike, many tenants of converted buildings are quite literally forced out and left to look elsewhere for rental opportunities.⁵⁶

However, finding a new rental apartment can also prove to be a daunting task because condominium conversions can cause a decrease in the number of available rental units.⁵⁷ “[This] effect is magnified . . . because the same price pressures that drive condo conversions prompt builders to build condos instead of apartments in the first place.”⁵⁸ Additionally, the reduced rental supply caused by conversions necessarily drives up market-rate rents.⁵⁹ And with an apartment rent increase of 5.2% in Southern California during the first quarter of 2005,⁶⁰ surrounding market-rate rentals are oftentimes out of reach as well.

Without an inclusionary program to make converted units available to displaced tenants, this trend is likely to continue. Furthermore, the inflated demand created by investors could lead to further increases in both purchase prices and rents, which may actually serve to push more low- and moderate-income households out of the market. Therefore, while condominium conversions are a viable opportunity for people to purchase a home that they might otherwise be unable to afford, there must be some protection for low- and moderate-income families residing in converted buildings.

C. State Regulation of Condominium Conversions

Having examined the various advantages and disadvantages of condominium conversions, it is helpful to understand the California legislation that regulates, or rather permits regulation of, conversions. For the most part, conversions are left to the control of local govern-

55. LePage, *supra* note 29; Roberts, *supra* note 32. “New rental units tend to rent for higher prices than older units, too, and those converted condo units that return to the rental stock tend to fetch higher rents than typical apartment units.” Roberts, *supra* note 32.

56. LePage, *supra* note 29.

57. Bradley J. Fikes, *Housing Prices Plateau in '04 but Not Expected to Dive in '05*, N. COUNTY TIMES (San Diego), Jan. 1, 2005, available at http://www.nctimes.com/articles/2005/01/02/business/news/14_06_231_1_05.prt.

58. *Id.*

59. Roberts, *supra* note 32.

60. Freeman, *supra* note 10. Southern California's 5.2% increase in apartment rents during the first quarter of 2005 was higher than the statewide increase of 3.3% during the same time period. *Id.*

ments under the Subdivision Map Act (SMA)⁶¹ and Planning and Zoning Law (planning laws).⁶²

To begin with, the SMA provides a means for local governments to regulate conversions via subdivision review.⁶³ A subdivision is defined as "the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, . . . for the purpose of sale, lease or financing, whether immediate or future."⁶⁴ A subdivision necessarily includes the conversion of an apartment building to condominiums.⁶⁵

The SMA requires a conversion developer creating five or more dwelling units to submit both a tentative and final subdivision map to the local government for approval.⁶⁶ The local government must then ensure the proposed conversion is consistent with its general plan and any specific plans adopted under it.⁶⁷ If the subdivision is not consistent with the general plan, then the local government has explicit authority to deny it.⁶⁸

The SMA also provides several other means for local governments to regulate conversions, most of which are guised as remedial tenant protections. For instance, before a local government can approve a proposed conversion, the tenants of the proposed conversion

61. Subdivision Map Act, CAL. GOV'T CODE §§ 66410-66413.7 (Deering 2005).

62. Planning and Zoning Law, CAL. GOV'T CODE §§ 65000-65010 (Deering 2005).

63. *Id.* § 66411.

Regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies. Each local agency shall, by ordinance, regulate and control the initial design and improvement of common interest developments . . . and subdivisions for which this division requires a tentative and final or parcel map.

Id.

64. *Id.* § 66424.

65. Roger C. Vandever, Comment, *Conversion of Apartments to Condominiums: Social and Economic Regulations Under the California Subdivision Map Act*, 16 CAL. W. L. REV. 466, 471 (1980) ("When an existing apartment building is converted into condominiums, it necessarily involves subdivision of the property.").

66. Section 66426.

67. *Id.* § 66473.5. Section 66473.5 provides:

No local agency shall approve a tentative map, or a parcel map for which a tentative map was not required, unless the legislative body finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan . . . or any specific plan

A proposed subdivision shall be consistent with a general plan or a specific plan only if the local agency has officially adopted such a plan and the proposed subdivision or land use is compatible with the objectives, policies, general land uses, and programs specified in such a plan.

Id.

68. *Id.* § 66473.

must receive (1) at least sixty days written notice of the intent to convert, prior to filing a tentative map;⁶⁹ (2) written notice of approval of the final map for the proposed conversion, within ten days of approval;⁷⁰ (3) written notice of the developer's intent to convert, 180 days prior to termination of the tenancy;⁷¹ and (4) a right of first refusal for the purchase of their converted unit.⁷² Noncompliance with any one of these provisions requires denial of the subdivision map.⁷³ Thus, this portion of the SMA acts more as a regulatory provision giving local governments certain grounds for refusing a conversion, rather than as a true tenant protection.⁷⁴

In addition to the SMA, planning laws provide another mechanism for local governments to regulate conversions while also serving to promote the development of affordable housing in general. According to these laws, local governments must adopt a general plan for the city or county's future development.⁷⁵ The general plan must consist of several mandatory elements.⁷⁶ For condominium conversions, the housing element is the most important.

In general, a housing element must include the local government's assessment of its housing needs, a statement of goals "relative to the maintenance, preservation, improvement, and development of housing," and a program that outlines a five-year schedule of the actions being taken to achieve the housing element's goals.⁷⁷ Notably, the five-year program outlined in the housing element must "[a]ssist in the development of adequate housing to meet the needs of low- and moderate-income households."⁷⁸

The purpose of the housing element appears to be twofold. First, since proposed subdivisions must be consistent with the general plan⁷⁹

69. *Id.* § 66427.1(a).

70. *Id.* § 66427.1(b).

71. *Id.* § 66427.1(c).

72. *Id.* § 66427.1(d).

73. *Id.* § 66427.1. "The legislative body shall not approve a final map for a subdivision to be created from the conversion of residential real property into a condominium project, a community apartment project, or a stock cooperative project unless it finds all of the requirements of sections (a) through (d) are met." *Id.*

74. Vandever, *supra* note 65, at 474.

75. CAL. GOV'T CODE § 65300 (Deering 2005).

76. *Id.* § 65302. The mandatory elements of the general plan are (a) land use; (b) circulation; (c) housing; (d) conservation; (e) open-space; (f) noise; and (g) safety. *Id.* § 65302(a)-(g).

77. *Id.* § 65583(a)-(c).

78. *Id.* § 65583(c)(2).

79. *Id.* § 66473.5; see also *supra* note 67 and accompanying text.

and the general plan must provide adequate housing for low- and moderate-income households,⁸⁰ a local government could conceivably deny a proposed conversion that does not provide for the development of affordable housing.⁸¹ Albeit unlikely, the housing element could provide another means by which local governments can regulate condominium conversions.

Second, while there is admittedly “no state law mandating the provision of affordable housing,”⁸² the housing element is a state-level attempt to encourage local governments to address the affordable housing crisis.⁸³ However, because there is no way to enforce compliance with the housing element, “there is no mechanism to ensure that a city or county is actually providing its fair share of affordable housing.”⁸⁴ The affordable housing provision of the housing element is, therefore, more of a suggestion than a directive.

Although the SMA and planning laws vest broad regulatory authority in local governments, they do little themselves to protect the affordable housing supply or tenants affected by conversions. For instance, a right of first refusal is virtually useless to a tenant who does not have the financial capability to purchase the unit in the first place. Consequently, local governments are forced to find solutions to the lack of affordable housing while still being sensitive to the needs of displaced tenants. More and more California communities are recognizing that inclusionary housing programs are one successful method for dealing with issues of affordable housing.

III. INCLUSIONARY HOUSING

A. *Brief History of Inclusionary Housing*

In 1971, Fairfax County, Virginia, adopted the first inclusionary housing program in the country.⁸⁵ Although the Fairfax County ordinance was subsequently held to be unconstitutional,⁸⁶ it served as a

80. Section 65583(c)(2); *see also supra* note 78 and accompanying text.

81. *See Vandeveer, supra* note 65, at 477.

82. Padilla, *supra* note 14, at 549.

83. *See* § 65583(c)(2).

84. Padilla, *supra* note 14, at 549.

85. IHREADER, *supra* note 14, at 15; Kautz, *supra* note 6, at 977.

86. *Bd. of Supervisors v. DeGroff Enters., Inc.*, 198 S.E.2d 600, 602 (Va. 1973) (holding the Fairfax County ordinance was an unconstitutional taking under the Virginia Constitution). “[Fairfax] County subsequently modified the ordinance, which has been in successful

springboard for other inclusionary housing programs nationwide.⁸⁷ For instance, Montgomery County, Maryland, enacted a similar program only two years later.⁸⁸

In New Jersey, inclusionary housing programs were not widely adopted until the courts became involved. The landmark case of *Southern Burlington County NAACP v. Township of Mount Laurel* required local governments to use “affirmative measures” and “inclusionary devices” to address low-income housing needs.⁸⁹ With its ruling, “the New Jersey Supreme Court forced recalcitrant localities to address economic and racial integration through fair-share housing plans.”⁹⁰ Today, New Jersey is one of the top areas in the nation at fostering local adoption of inclusionary housing programs.⁹¹

In California, legislative intervention has served as the primary catalyst for implementing inclusionary housing programs.⁹² However, the California courts have also been involved. Recently, in *Home Builders Association v. City of Napa*, the court recognized inclusionary housing programs as a constitutionally valid means of providing affordable housing for low- and moderate-income families.⁹³ In so holding, the court reiterated the Legislature’s declaration:

That “the development of a sufficient supply of housing to meet the needs of *all Californians* is a matter of statewide concern,” and that local governments have “a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of *all economic segments of the community*.”⁹⁴

This decision cleared, and will undoubtedly continue to clear, the way for additional inclusionary housing programs throughout the state.

operation for almost 15 years.” Nico Calavita, *Introduction to Inclusionary Zoning: The California Experience*, NHC AFFORDABLE HOUSING POL’Y REV., Feb. 2004, at 1, 1.

87. See IH READER, *supra* note 14, at 15; Kautz, *supra* note 6, at 977.

88. Kautz, *supra* note 6, at 977.

89. *S. Burlington County NAACP v. Twp. of Mount Laurel*, 456 A.2d 390, 448 (N.J. 1983).

90. Calavita, *supra* note 86, at 1.

91. See *id.* at 2.

92. Kautz, *supra* note 6, at 978; see also *supra* Part II.C. “[T]he intervention of the courts in New Jersey and the passage of state legislation in California were the ‘central elements’ in the two states’ widespread use of [inclusionary housing] program[s].” Kautz, *supra* note 6, at 978.

93. *Home Builders Ass’n v. City of Napa*, 108 Cal. Rptr. 2d 60, 64 (Ct. App. 2001).

94. *Id.* (quoting CAL. GOV’T CODE §§ 65913.9 & 65580(d) (citations omitted)).

Over the past few decades, inclusionary housing programs in California have proliferated. From 1994 to 2003, the number of programs nearly doubled, from 64 to 107.⁹⁵ But that increase is illusory, as it represents only one-fifth of all California localities.⁹⁶ Thus, while current inclusionary policies have created some 34,000 affordable housing units statewide,⁹⁷ there is significant room for improvement. This is particularly true given the increase in condominium conversions.

B. Inclusionary Housing Characteristics

In California, inclusionary housing programs are adopted by way of local "zoning ordinances, policy statements, or a locality's housing element."⁹⁸ While the vast majority of inclusionary housing programs are defined by specific ordinance, rather than in the general plan, the two are frequently linked because provisions in the general plan often call for local governments to adopt an ordinance.⁹⁹ Whether defined by ordinance or otherwise, the freedom each community has to create an inclusionary housing program "has spawned virtually endless variation in program design."¹⁰⁰

1. Mandatory vs. Voluntary Programs

Virtually all of the existing programs in California are mandatory.¹⁰¹ "Mandatory programs require that a developer set aside a certain percentage of inclusionary units as a condition to approval of the developer's project."¹⁰² The mandatory percentage of affordable units is typically between 10 and 30% of the total number of units.¹⁰³ How-

95. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 9; see also BENJAMIN POWELL & EDWARD STRINGHAM, HOUSING SUPPLY AND AFFORDABILITY: DO AFFORDABLE HOUSING MANDATES WORK? (2004), *available at* <http://www.reason.org/ps318.pdf>. "Between 1990 and 2003, the number of California communities with inclusionary zoning more than tripled—from 29 to 107 communities" POWELL & STRINGHAM, *supra*, at Executive Summary.

96. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 9.

97. *Id.*

98. Padilla, *supra* note 14, at 551.

99. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 13 (stating that 78% of California inclusionary programs are defined by ordinance, whereas 49% are attributable to general plans).

100. *Id.* at 9.

101. *Id.* at 13. Of the 107 California jurisdictions that currently have inclusionary housing measures in place, only 6% are voluntary. *Id.* at 9, 13.

102. Padilla, *supra* note 14, at 552.

103. IHREADER, *supra* note 14, at 42.

ever, most mandatory programs only apply to developments of a certain size, usually projects involving a minimum of five to ten units.¹⁰⁴

Voluntary programs, on the other hand, typically offer optional incentives to developers who agree to "set aside a suggested percentage of inclusionary units."¹⁰⁵ Although both programs work toward the same end, mandatory programs are generally recognized as the more successful alternative.¹⁰⁶

2. *In-Lieu Fees*

In some instances, developers can elect to pay a predetermined "in-lieu" fee instead of setting aside affordable units at the development site.¹⁰⁷ The idea is to use the developer's fee to provide affordable housing elsewhere.¹⁰⁸ This essentially allows a developer to "pay instead of build."¹⁰⁹ And since paying the fee is usually less expensive than building the units, developers often choose to pay the fee.¹¹⁰

Accordingly, local governments must be careful in setting the in-lieu fee.¹¹¹ The fee must be high enough to either encourage developers to build the affordable units (instead of paying the in-lieu fee) or provide enough funding to build an equal number of affordable units elsewhere.¹¹² Understandably, this is one of the most controversial components of any inclusionary housing program.¹¹³

In-lieu fees may be disadvantageous for condominium conversions. First, the fees collected generally do not yield "the same number of [affordable] units that would have been produced had developers opted to build the units themselves."¹¹⁴ This results in an overall decrease in the number of affordable housing units. Second, condo-

104. *Id.* Local governments probably target the larger developments because they are viewed as being more capable of bearing the financial burden of providing below-market-rate units. *Id.*

105. Padilla, *supra* note 14, at 552.

106. See Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 13 (noting voluntary programs "compromise local ability to guarantee affordable housing production").

107. Kautz, *supra* note 6, at 981.

108. *Id.*

109. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 19.

110. IH READER, *supra* note 14, at 45.

111. See Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 19.

112. *Id.*

113. *Id.*

114. *Id.*

minium conversions, unlike new construction, involve existing structures. Because the units are already in place, it is much easier for the developer to provide the affordable units on-site. Finally, in-lieu fees do not address the displacement of existing residents. Thus, at least in relation to condominium conversions, in-lieu fees do not effectively aid in the production of affordable housing.

3. *Developer Incentives*

Oftentimes developers who comply with the affordability requirements sustain decreased profits when building below-market-rate units.¹¹⁵ To encourage the production of affordable housing and the participation of developers, many inclusionary housing programs contain various developer incentives.¹¹⁶ Some of the more common incentives include density bonuses, subsidies, fast track processing, fee deferrals, and fee waivers.¹¹⁷ Of these, “[d]ensity bonuses are by far the most popular incentive offered to developers to build affordable housing.”¹¹⁸

State density bonus law requires local governments to offer incentives to developers who voluntarily agree to set aside a specified percentage of units for affordable housing.¹¹⁹ For condominiums, the minimum percentage of affordable units necessary to invoke the density bonus laws is 5% of the total units.¹²⁰

4. *Preservation of Affordable Housing*

An effective inclusionary housing program should contain some mechanism for keeping the inclusionary units affordable.¹²¹ Otherwise, the inclusionary units could later be sold at market price, forever

115. IHREADER, *supra* note 14, at 45.

116. *Id.*

117. *Id.*; Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass’n of N. Cal., *supra* note 9, at 23; *see also* Padilla, *supra* note 14, at 553.

118. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass’n of N. Cal., *supra* note 9, at 23.

119. CAL. GOV’T CODE § 65915(b)(1) (Deering 2005); *see also* POWELL & STRINGHAM, *supra* note 95, at 29. A “density bonus” gives “builders the option to increase the density of their developments in return for making more of the units affordable.” POWELL & STRINGHAM, *supra* note 95, at 29. The additional number of market rate units presumably allows developers to recoup any lost profits resulting from the provision of affordable units. *Id.* In many instances, developers could actually stand to make more money. *See id.*

120. CAL. GOV’T CODE § 65915(b)(1)(B) (Deering 2005). The threshold of 5% applies to very low-income households. *Id.* For low and moderate-income households, the required minimum percentage of total units is 10%. *Id.* § 65915(b)(1)(A) & (D).

121. *See* Padilla, *supra* note 14, at 554.

removing them from the affordable housing supply.¹²² Despite this potential catastrophe, many programs in California do not have any preventive mechanism in place.¹²³ Those that do have resale or rental restrictions usually implement them through deeds, covenants, options, or rights of first refusal.¹²⁴ The restrictions generally range from five years to an unlimited duration.¹²⁵

C. The Inclusionary Housing Debate

Today, the debate over inclusionary housing is as fierce as ever, particularly in light of the resurgence of condominium conversions. This section provides a summary of the key arguments in favor of and against inclusionary housing programs.

1. The Arguments in Favor of Inclusionary Housing

The primary argument in support of inclusionary housing is straightforward: inclusionary housing programs successfully achieve increases in the supply of affordable housing.¹²⁶ More importantly, they do so without any government subsidy.¹²⁷ "Mandatory inclusionary zoning ensures that affordable housing will be provided."¹²⁸ In California, at least 34,000 affordable units have been created in the communities with inclusionary housing programs.¹²⁹ By some estimates, inclusionary programs in California have the potential to produce more than 15,000 affordable units annually.¹³⁰

For example, San Diego is considered the "Condo Capital of Southern California,"¹³¹ accounting for 90% of Southern California's condominium conversions.¹³² From 2000 to 2004, there were 4214

122. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 24.

123. Padilla, *supra* note 14, at 554; Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 24. In Irvine, California, almost all of the 1610 affordable units created prior to 2001 have been resold at market-rate prices, because the city had no means of resale control before 2001. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 24.

124. Padilla, *supra* note 14, at 554-55.

125. *Id.* at 555.

126. IH READER, *supra* note 14, at 34.

127. *Id.*

128. Kautz, *supra* note 6, at 982.

129. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 13.

130. *Id.* at 9.

131. *Ip*, *supra* note 3.

132. Hall, *supra* note 32.

condominium conversions in San Diego alone.¹³³ Since then, applications to convert more than 6300 additional units have been submitted.¹³⁴ San Diego's current inclusionary housing ordinance requires 10% of applicable units be set aside for lower income households.¹³⁵ This means approximately 1000 affordable units have been produced in the last five years. With signs of such promise, there is a tremendous incentive to continue implementing inclusionary housing measures statewide.

In addition, inclusionary housing programs foster diverse and stable mixed-income communities.¹³⁶ Such programs avoid the typical segregation associated with isolated affordable housing efforts by mixing low- and moderate-income units with market-rate housing.¹³⁷ "[I]nclusionary housing programs provide affordable housing where it has traditionally not been available."¹³⁸

A similar result occurs when inclusionary housing programs are applied to condominium conversions. Since conversions frequently occur in older neighborhoods,¹³⁹ inclusionary housing programs can provide low- and moderate-income renters a chance to own their home while their communities undergo gentrification. Thus, social integration is often achieved by attracting market-rate buyers to what were historically low- and moderate-income neighborhoods, a somewhat inverted result compared to the *normal* integration that occurs with inclusionary housing.¹⁴⁰

Inclusionary housing programs also promote job and housing balance by providing more housing close to employment areas.¹⁴¹ As a result, commuting and labor costs are reduced.¹⁴² Furthermore, inclu-

133. Katherine Marks, *The Consequences of Condo Conversions*, N. COUNTY TIMES (San Diego), June 24, 2004, available at http://www.nctimes.com/articles/2004/06/25/news/top_stories/18_11_086_24_04.txt.

134. Larry M. Edwards, *San Diego May Tighten Inclusionary Housing Rule*, VOICE OF SAN DIEGO.COM, Mar. 9, 2005.

135. SAN DIEGO, CAL., MUNICIPAL CODE § 142.1306(a) (2004).

136. IH READER, *supra* note 14, at 37.

137. *Id.* at 28.

138. Padilla, *supra* note 14, at 564.

139. See Gose, *supra* note 45 (intimating that conversions are not limited to areas generally regarded as "better neighborhoods," but extend to previously undesirable communities as well).

140. See IH READER, *supra* note 14, at 28.

141. Padilla, *supra* note 14, at 564.

142. *Id.* at 564-65.

sionary housing can provide children of low- and moderate-income families the opportunity to attend higher quality public schools.¹⁴³

On the whole, inclusionary housing programs have proven to be an effective means of creating affordable housing. Despite the clear benefits of such programs, they have been met with strong opposition. After all, “[a] program that so clearly reduces developers’ incomes while subsidizing low-income households can be expected to be controversial.”¹⁴⁴

2. *The Arguments Against Inclusionary Housing*

Critics of inclusionary housing programs typically advance several arguments in support of their position.¹⁴⁵ First, opponents argue inclusionary housing programs unfairly place the burden of providing affordable housing onto for-profit developers, market-rate homebuyers, and local governments.¹⁴⁶ They contend that since developers make little or no profit on inclusionary units, the developers are forced to shoulder the cost of subsidizing a society-wide problem.¹⁴⁷ However, at least one author has urged this burden shift is actually beneficial because it creates a “partnership of many parties.”¹⁴⁸ Rather than placing the burden of affordable housing entirely on government, inclusionary housing programs spread the cost among a large support base.¹⁴⁹ The programs force an array of groups, including “private developers, public agencies, and non-profit entities, among others, to work together” to create affordable housing.¹⁵⁰ Inclusionary housing can thus be viewed as a cost-spreading mechanism, as opposed to a burden-shifting one.¹⁵¹

143. *Id.* at 567.

144. Kautz, *supra* note 6, at 974.

145. This section sets out several of the common critiques of inclusionary housing programs, though there are many intricacies involved in this debate. However, the purpose of this discussion is not to delve into the various economic policies underpinning each position, but rather to provide an overview. To that end, portions of this section have been purposely oversimplified for the sake of clarity.

146. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass’n of N. Cal., *supra* note 9, at 25; *see also* Kautz, *supra* note 6, at 983.

147. IH READER, *supra* note 14, at 29.

148. Padilla, *supra* note 14, at 568-69.

149. *Id.*

150. *Id.* at 568.

151. *Id.*

Critics, namely developers, are also quick to point out that inclusionary housing programs can increase overall housing costs.¹⁵² They claim developers will be forced to raise the price of other homes to make up for lost profits attributable to inclusionary units.¹⁵³ For instance, if a developer could normally sell a unit for \$500,000, but was forced to sell it for \$300,000 because of a mandatory inclusionary housing program, the \$200,000 difference would be spread among the remaining market-rate units by increasing their respective prices proportionally.¹⁵⁴ Thus, market-rate homebuyers will truly be the ones to bear the cost of inclusionary housing programs.¹⁵⁵ Furthermore, the ability of market-rate homebuyers to afford market-rate housing is diminished, because the market-rate buyers subsidize the cost of the affordable units.¹⁵⁶

However, this position is highly controversial.¹⁵⁷ Despite the criticism, inclusionary housing programs have little effect on developer profits when combined with sufficient cost offsets, such as density bonuses.¹⁵⁸ Density bonuses, if set high enough, can reduce or eliminate the "tax" inclusionary housing programs place on developers, in turn eliminating the need for developers to raise home prices in order to realize a profit.¹⁵⁹ With proper design and implementation, inclusionary housing programs should have almost no impact on housing costs.

A corollary to this argument is that inclusionary housing programs reduce the production of new housing.¹⁶⁰ However, this argument has been criticized as "largely theoretical."¹⁶¹ One California study found that new construction fell by 31% the year after an inclusionary housing program was instituted,¹⁶² while another study found that construction rates in California rose or remained constant in inclusionary communities during the 1990s.¹⁶³ With such divergent conclusions, it

152. IH READER, *supra* note 14, at 29.

153. Kautz, *supra* note 6, at 983.

154. *See id.*

155. Calavita, *supra* note 8, at 7.

156. *Id.*

157. *Id.* "[I]nclusionary programs often do not increase housing prices of market rate units." Padilla, *supra* note 14, at 578.

158. *See* Calavita, *supra* note 8, at 7.

159. Kautz, *supra* note 6, at 988.

160. POWELL & STRINGHAM, *supra* note 95, at Executive Summary.

161. Calavita, *supra* note 8, at 7.

162. POWELL & STRINGHAM, *supra* note 95, at Executive Summary.

163. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 25.

is difficult to determine the true effect of inclusionary housing programs on overall housing production.¹⁶⁴ However, since this argument is based largely on the same grounds as the argument predicting higher housing costs, inclusionary housing programs that offer sufficient incentives should still encourage developers to build.¹⁶⁵ Although “market-rate housing developers may not like inclusionary programs, [they still] choose to produce affordable units rather than stop developing altogether.”¹⁶⁶

Lastly, those opposed to inclusionary housing argue there are serious problems in the implementation and long-term success of such programs.¹⁶⁷ Specifically, critics claim the scarcity of land in many localities will eliminate the value of inclusionary housing programs.¹⁶⁸ They argue that a limited supply of land necessarily means fewer affordable units will be produced.¹⁶⁹ However, this argument fails to recognize that inclusionary housing programs are not limited to new housing production and do not necessarily require raw land to be successful. Condominium conversions, for one, are a rich source of existing housing that can produce a substantial number of affordable units without the need for additional land. In fact, the lack of raw land is one of the reasons developers are turning to conversions in the first place.¹⁷⁰ Thus, the scarcity of land argument is moot with respect to condominium conversions.

As the debate over inclusionary housing wages on, critics will continue to speak out against it. However, “[t]hese criticisms, while warranted and substantive, pale by comparison to the roster of benefits attributable to inclusionary housing programs.”¹⁷¹

IV. A CALL TO ACTION

At a time when many communities are reexamining their condominium conversion legislation, some provisions must be made for inclusionary housing. Mindful of the need for affordable housing, and having examined the various arguments for and against inclusionary

164. Kautz, *supra* note 6, at 988.

165. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass’n of N. Cal., *supra* note 9, at 25.

166. *Id.* at 29.

167. *Id.*

168. *Id.* at 28-29.

169. *Id.* at 29.

170. See *supra* notes 38-39 and accompanying text.

171. IHREADER, *supra* note 14, at 31.

housing programs, this Comment proposes that local governments amend existing, or adopt new, condominium conversion legislation to include an appropriate inclusionary housing component.

Coupling inclusionary housing programs with condominium conversion legislation would help to alleviate many of the inherent problems of conversions. Inclusionary housing programs for condominium conversions would limit tenant displacement by giving low- and moderate-income tenants an opportunity to purchase their units at a price substantially lower than traditional market-rate conversions. Although some tenants would still be unable to afford their converted unit, this would undoubtedly reduce the current level of tenant displacement. Moreover, with production estimates of 15,000 affordable units annually,¹⁷² widespread adoption of inclusionary housing programs would provide affordable housing to a large segment of the community—something condominium conversions are touted as doing anyway.

A second benefit of incorporating inclusionary housing programs into condominium conversion legislation is the ease with which it could be accomplished. Unlike new developments, condominium conversions are not prone to concerns of land scarcity or cost prohibition; the affordable units already exist. Thus, implementation would hardly be an issue.

Furthermore, affordable units within a conversion development are logistically easier to place alongside market-rate units than in detached home developments.¹⁷³ Developers also expect less opposition in condominium conversion units because condominium owners typically view their purchase as a shorter-term investment than owners of single-family homes.¹⁷⁴

All localities adopting inclusionary housing programs do not have to adopt identical programs.¹⁷⁵ Indeed, each locality must consider its

172. Cal. Coal. for Rural Hous. & Non-Profit Hous. Ass'n of N. Cal., *supra* note 9, at 9.

173. Nico Calavita et al., *Inclusionary Housing in California and New Jersey: A Comparative Analysis*, 8 HOUSING POL'Y DEBATE 109, 133 (1997).

174. *Id.*

175. In the mid-1990s, the California Legislature considered State Assembly Bill 1684. Assemb. B. 1684, 55th Gen. Assemb., Reg. Sess. (Cal. 1993). Assembly Bill 1684 would have imposed a mandatory statewide inclusionary housing program. *Id.* § 3. Under the bill, each community would be free to draft its own inclusionary housing program, so long as it was consistent with certain required provisions. *Id.* § 2. However, if a community failed to adopt an inclusionary housing program by a specified date, a state model inclusionary ordinance would become effective. *Id.* In the latter case, one "boilerplate" inclusionary ordinance would be forced onto every California community, irrespective of that community's unique needs and goals. *Id.*

unique position and draft an inclusionary policy that meets the needs of that particular community. However, in the context of condominium conversions, there are several factors to consider when creating an inclusionary housing program.

First, it is vital that local governments include adequate cost offsets to entice developers to build. These financial incentives will encourage developer participation in the inclusionary program and will help to prevent any possible increase in market-rate home prices.

Additionally, localities should consider eliminating in-lieu fees, because, with condominium conversions, the affordable units already exist. Because developers do not have to build new units, allowing a developer to simply pay a fee rather than provide the affordable units themselves is not logical. Eliminating in-lieu fees alone would significantly increase the physical production of inclusionary units.

Lastly, placing resale restrictions on the affordable units would ensure that they remained affordable for future low- and moderate-income households. It would also prevent subsequent investors from *flipping* the unit and obtaining a windfall.

V. CONCLUSION

With proper implementation and design, incorporating inclusionary housing programs into condominium conversion legislation could provide an ample supply of affordable housing, while reducing many of the adverse consequences of condominium conversions. Although they should not be the only method employed to combat the affordable housing crisis, inclusionary housing programs "must remain a significant part of [an affordable housing] strategy."¹⁷⁶

*Robert Chambers**

Assembly Bill 1684, which was part of a three-bill package, ultimately failed when another bill in the package was voted down. See S.B. 377, 55th Gen. Assemb., Reg. Sess. (Cal. 1993). Since the legislature did not vote on the merits of Assembly Bill 1684, it is difficult to predict whether it would have passed had it not been part of a bill package. However, this author is of the opinion that a single, statewide inclusionary housing program would fail because it does not take into account the specific needs of each community. Rather, as this Comment proposes, an effective inclusionary housing program must be drafted at the local level. Only then can the appropriate weight be given to the competing interests of that community. In short, inclusionary housing programs should not be identical for every community.

176. Calavita, *supra* note 173, at 138.

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